

JAN 18 2008

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JUAN MANUEL OROSCO-CORTEZ,

Defendant - Appellant.

No. 06-50270

D.C. No. CR-04-00726-SJO-1

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
S. James Otero, District Judge, Presiding

Submitted January 14, 2008^{**}

Before: HALL, O'SCANLAIN, and PAEZ, Circuit Judges.

Juan Manuel Orosco-Cortez appeals from the 95-month sentence imposed following his guilty-plea conviction for illegal reentry following deportation, in

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and we affirm, but remand to correct the judgment.

Orosco-Cortez contends that the district court erred by failing to recognize that it had authority to depart downwards under U.S.S.G. § 5K2.11, or based upon the totality of the circumstances. However, we have stated that the district court need not “calculate what departure[s] would be allowable under the old mandatory [Guidelines] scheme.” *See United States v. Mohamed*, 459 F.3d 979, 986 (9th Cir. 2006). The record reflects that the district court properly considered Orosco-Cortez’s departure-related contentions within the context of its analysis of the factors set forth in 18 U.S.C. § 3553(a). *See id.* at 986-87.

We remand to the district court with instructions to correct the reference in the judgment to “8 U.S.C. § 13326(a)(b)(2).” *See United States v. Herrera-Blanco*, 232 F.3d 715, 719 (9th Cir. 2000) (remanding sua sponte to delete the reference to § 1326(b)).

AFFIRMED; REMANDED to correct judgment.